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COSTS AND BENEFITS OF RESTRICTIONS ON CREDITORS' REMEDIES

Richard L. Peterson and Gregory A. Falls*

Abstract

This paper analyzes data obtained in late 1978 and early 1979 from extensive surveys of consumers and creditors located in four states with wide differences in laws affecting legal rate ceilings and creditors' remedies. Creditors were asked a series of questions relating to their use and valuation of remedies. Consumers were asked a number of questions relating to their valuation of various remedy protections and their attitudes toward particular creditors' remedies. Consumers also were asked a set of questions relating to their past credit experience and the likelihood that they would experience payment difficulties in the future.

Among the more interesting findings of the survey were

(1) Creditors used "tough" remedies most frequently and (when possible) most quickly in states with low consumer credit rate ceilings. They were least likely to use "tough" remedies in the state with the weakest (most expensive) remedies and highest rate ceilings.

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(2) Most consumers were not willing to pay for various protections against the exercise of creditors' remedies. Even the majority of consumers who expected they might fall behind on their debts in the future were not willing to pay for protection against various remedies.

(3) Consumers' willingness to pay for various remedy protections varied with their state's legal environment. In a state with weak, infrequently used remedies, few consumers were willing to pay for remedy protections. In a state with tougher remedies, more consumers were willing to pay for protection, even though "tough" remedies did not appear to be used frequently.

(4) Consumers who had previously fallen behind on their debts showed the greatest sensitivity to actual legal environments. For instance, such consumers were less willing to pay for late charge and attorney's fee protection in a state where such fees were already restricted. Further, such consumers were uniformly most willing to pay for remedy protections in the state where "tough" remedies were most quickly and frequently used.

(5) Consumers' attitudes toward various remedies varied greatly. They generally felt late fees, repossession, phone calls, and garnishment of savings accounts were acceptable. They disliked the taking of household goods, employer contacts, deficiency judgments, and the taking of wage assignments or garnishment.

(6) Interestingly, there was surprising agreement in consumer and creditor valuation of remedies. Creditors highly valued late fees and repossession. Further, creditors placed little value on the taking of household goods. This can be explained by noting that creditors may be sensitive to the "goodwill" and market share they will lose if they exercise unpopular remedies.

(7) In general, it appears that the market will adjust to consumers' attitudes toward remedies. Creditors will not use remedies strongly disliked by consumers unless those remedies have great value to them as collection tools. If unpopular remedies have little collection value, creditors are not likely to use them. However, if creditors continue to use unpopular remedies, such as garnishment and attorney's fee clauses, the banning of such remedies through legislation may lead to welfare losses because credit availability will contract.

Studies based on NCCF data show credit availability has contracted in states where attorneys fees and garnishment have been restricted. This fact, compiled with data obtained in these studies, suggest that creditors use these remedies where they are legally available because they are highly valued as collection devices and consumers are not willing to pay much to obtain protection against their exercise.

COSTS AND BENEFITS OF RESTRICTIONS ON CREDITORS' REMEDIES

Richard L. Peterson and Gregory D. Falls

I. Overview

Many states restrict the remedies creditors may exercise to collect on delinquent and defaulted debts. In addition, various Federal provisions exist that regulate debt collection--in the form of the Federal Consumer Credit Protection Act; the Fair Debt Collection Practices Act, the Bankruptcy Reform Act of 1978, and key judicial interpretations at the Federal level. Also, the Federal Trade Commission has proposed an extensive set of restrictions on credit collection practices in its proposed Trade Regulation Rule on Credit Practices, and new proposals relating to creditors' remedies often arise in both Congress and various regulatory agencies. Thus, it is of considerable interest to assess the costs and benefits of restrictions on creditors' remedies for both creditors and consumers.

Statutory restrictions on creditors' remedies vary widely among states. Hence, it is useful to analyze the response of consumers and creditors to different states' remedy environments to determine what impact proposed restrictions might have. A number of previous studies of differences in consumer and creditor behavior in states with different remedies have been conducted. Extensive studies were conducted by the National Commission on Consumer Finance.[1] Those studies used data on the economic characteristics of the consumer credit markets to assess the impact of various statewide restrictions on creditors' remedies on consumer credit markets. In addition, the NCCF studies

also collected and tabulated data from individual firms regarding their usage and assessment of the relative importance of various remedies.

Following the NCCF studies, a number of additional studies of the impact of restrictions on creditors' remedies were conducted in the mid or late 1970's. These studies were conducted after the FTC proposed its Trade Regulation Rule on credit practices. A number of studies were prepared. Those conducted by Barth and Yezer and Shay analyzed data on personal loans collected from consumer finance companies operating in different states.[2] Those conducted by Peterson and Dunkelberg analyzed surveys of creditors conducted in Wisconsin--a state with many laws similar to the proposed FTC Trade Regulation Rule.[3]

All of the most thorough NCCF and FTC-related studies were characterized by the fact that data were collected only from creditors. No attempt was made to evaluate directly consumer attitudes toward various remedies. Consequently, the studies typically encountered difficulty in directly assessing potential costs and benefits of various remedies to consumers. The studies also were unable to compare consumer valuation of various protections against the exercise of remedies with creditors' evaluations of those remedies.

This study is unique in that it (1) analyzes data obtained directly from consumers regarding their evaluation of various creditors' remedies, (2) it compares consumer attitudes toward various remedies with creditor attitudes toward specific remedies, and (3) it relates creditor use of remedies to the total economic and legal environment in which the creditors operate.

The empirical data analyzed in this study were obtained from nearly simultaneous surveys of consumers and creditors operating in well-defined local consumer credit markets in four states with substantially different laws relating to consumer loan rate ceilings and restrictions on creditors' remedies. Section II describes the data base. Following that, Section III analyzes the extent to which creditors use and value various remedies in each credit market surveyed. Creditors' use and valuation of various remedies appear to reflect the influence of particular state laws, the nature of each creditors' credit operations, and the level of legal consumer credit rate ceilings in each state.

Several major theoretical issues have been raised about consumer valuation of remedies and their use. On one hand, Johnson[4] has argued that the market will operate to provide consumers with protection against the exercise of a particular creditor remedy if consumers are more willing to pay for that protection than creditors are willing to pay to retain the remedy. On the other hand, the FTC's Bureau of Consumer Protection (BCP) and Barth and Yezer[5] have argued that consumers' knowledge of the potential burden they would bear if remedies were exercised is inadequate. Also, the BCP argued, based on Caplovitz studies,[6] that many consumer loan defaults were due to reasons beyond their control. Thus, they implicitly argued that consumers might underestimate their probabilities of experiencing credit difficulties and, therefore, underestimate the potential cost of remedies to them.

The data analyzed in Section IV relate to consumer evaluation of remedies. They allow distinctions to be made between the views held by individuals who feel they have a high subjective risk of default

and individuals who feel they are unlikely to default. The data also allow distinctions to be made between individuals who previously experienced the exercise of remedies--and those who had not.

Analysis of these data allows us to determine the extent to which consumers' expectations and past experience influence their valuation of various remedy protections. They indicate that some "learning" occurs that, depending on the remedy environment, may make consumers either more or less willing to pay for remedy protections if they have previously been behind on their debt payments. The data also show that a higher proportion of people who expect they may fall behind on their debt payments are willing to pay for protection against the exercise of various remedies than people who expect no future payment difficulties. However, in both cases, the preponderence of consumers were unwilling to pay for various remedy protections.

In Section V, additional consumer data are analyzed. Those data allow the most popular and least popular remedies to be determined from the viewpoint of consumers. When consumer evaluations of remedies are compared to the creditor evaluations reported in Section III, it is apparent that remedies least popular with consumers are least valued by creditors as well. Conversely, the remedies considered to be the most acceptable by consumers are among those most highly valued by creditors. This finding can be explained if one assumes that creditors are sensitive to the "goodwill" they may lose by exercising unpopular remedies. It is consistent with Johnson's argument that market forces will work to inhibit the use of remedies that are less valuable to creditors than they are to consumers.

Finally, Section VI summarizes previous findings and draws conclusions from the empirical analysis.

II. The Nature of the Study

This study analyzes data obtained to measure the use and valuation of various remedies by both creditors and consumers. Data were obtained from simultaneous surveys of large samples of consumers and creditors participating in four local credit markets in early 1979. The four markets were similar in that each was relatively self-contained (an SMSA or adjoining-SMSA's) and each had a relatively large proportion of blue-collar employment. However, the markets differed substantially in terms of their applicable rate ceilings and restrictions on creditors' remedies. Key rate ceiling and remedy restrictions in each market are highlighted in Exhibit 1.

Two local markets were selected to be minimally different in their socio-economic characteristics and maximally different in their legal environments. Those markets were Racine-Kenosha, Wisconsin and Waukegan-North Chicago, Illinois. In Wisconsin, both consumer credit rates and rate ceilings were highly restricted by the Wisconson Consumer Act (WCA). Because of legal restrictions imposed by that Act, repossession of property sold on credit was not possible before lengthy legal procedures had been followed. In addition, late charges on delinquent debts were limited, as were potential deficiency judgments. Also, creditors' attorney's fees could not be collected after default, confession of judgment clauses were not allowed, and non-purchase money security was eliminated on most consumer loans (except those secured by real estate). Further, wage assignments were revocable and garnishment exemptions were greater than those allowed by Federal law.

EXHIBIT 1: CREDITOR REMEDY AND RATE RESTRICTIONS IN SURVEY STATES IN 1979

State	AR	IL	LA	WI
I. Applicable Restrictions on Creditors' Remedies				
A. Overall Level of Restrictions	Not Highly Restrictive	Not Highly Restrictive	Highly Restrictive	Highly Restrictive
B. Late Payment Charges	No provision[1/]	Lesser of $10 or 5%	Lesser of[1/] Max. Rate, 3% or $5	Lesser of[1/4/] $3 or 3%
C. Attorney's Fee Charges	Limited to 10%[2/] of principal plus accrued interest	Reasonable[1/2/] fees allowed	Up to 25%[1/2/] of balance due	Prohibited[1/4/] in consumer credit
D. Confession of Judgment	Debtor must[2/] appear in court	Valid for[1/2/] small loans	Valid only[2/] after maturity or for executory process	Prohibited[1/2/4/]
E. Repossession	Self-help[1/2/] allowed under UCC	Self-help[1/2/] allowed under UCC	"Sequestration" requires replevin by legal[2/] authority	Requires[3/4/] prior judicial process
F. Deficiency Judgments	Allowed[1/2/] under UCC	Allowed but[2/] may not be available in some cases[1/]	No provision[1/] but recovery of deficiencies is prohibitively expensive[3/]	Prohibited for loans under $1,000[1/2/4/]

EXHIBIT 1 (continued)

State	AR	IL	LA	WI
G. Garnishment	Constitutional[1/2/] exemptions of $200 per single person and $500 for head of household (includes wages and personal property--)	Equivalent[2/] to Federal exemptions in most cases	Prohibited[1/2/] on loans if rates exceed 10%; at least $70/wk. or 75% of wages exempt otherwise	40 times minimum wage +$15 per dependent, or 75% of income
H. Wage Assignment	Needs consent of wife and must be accepted in writing by employer. No payment limits[2/]	Payment[2/] limitations exist, as do notice requirements. Assignments must be stopped if debtor claims a defense	Must be[2/] accepted by employer. Has no payment limit	Revocable;[2/] expires in 6 mo., requires witnessed signature of spouse
I. Blanket Security	Yes UCC	Yes UCC	Requires notarized list of security	No! Security is basically limited to purchase money interests
II. Applicable Rate Ceilings[5/]				
A. Overall Level Ceilings	Low Rates	Generally High Rates	Generally High Rates	Generally Low Rates
B. New Auto (36 mo.)	10%	14.55%	15%	12.83%
C. Bank Credit Cards	10%	18%	18%	18% to $500
D. Installment Sales Credit ($1,000 for 24 mo.)	10%	25.91%	24%	16.29%
E. Personal loans ($1,000 for 24 mo.)	10%	Small Loan Law 25.56% or Installment Loan Law 12.91%	35.43%	Wisconsin Consumer Act 16.29% or Discount Loan Act 20.40%

EXHIBIT 1 (continued)

Sources:

[1]Feldman, Sheldon and Reiley, Kimberly, A., A Compilation of Federal and State Laws Regulating Consumer Financial Services: Monograph No. 8, Credit Research Center, Purdue University, West Lafayette, IN 1977.

[2]Commerce Clearing House, Consumer Credit Guide, Topical Law Reports, 1980.

[3]Personal conversations with finance company executives.

[4]James L. Brown, "The Wisconsin Consumer Act and the Proposed FTC Rule Compared," and "Summaries of the Wisconsin Consumer Act," which are Appendices C and D respectively in Dunkelberg, William C., "Banks' Lending Response to Restricted Creditor Remedies," Working Paper No. 20, Credit Research Center, Purdue University, 1978.

[5]Gushee, Charles C., The Cost of Personal Borrowing in the United States, 1978 edition, Financial Publishing Company (Boston, Massachusetts), 1978.

Across the Illinois border from Racine-Kenosha, the socio-economic environment was similar--with a large blue-collar, industrial base, but the legal environment was quite different. Except for bank loans, Illinois rate ceilings on consumer credit were relatively high. In addition, the legal environment did not place substantial restrictions on creditors' abilities to collect on delinquent and defaulted debts. Repossessions and deficiency judgments could be obtained. Late charges were higher than in Wisconsin and attorney's fees could be added when collecting defaulted debts. Further, self-help repossession was available and even "confession of judgment" clauses were allowed in small loan contracts.

Because the Illinois and Wisconsin markets had the most dissimilar legal restrictions and the most similar populations, 1000 consumers were interviewed in each of the markets. In addition, all savings and loan associations, 90 percent of the commercial banks (100 percent in Illinois) 48 percent of the credit unions, and 74 percent of the consumer finance companies operating in each market were surveyed.

The other two markets were selected because they had unique consumer credit laws, had a large blue-collar base of employment (since blue collar workers are among the most frequent credit users) and provided legal environments that were complementary to the restrictive, non-restrictive environments of Wisconsin and Illinois.

Lake Charles, Louisiana was selected for study because Louisiana is the only state in the nation that has not patterned its laws on the Uniform Commercial Code. As a result, it has one of the most restrictive creditor remedy environments in the nation. Repossession is forbidden; albeit "sequestration," a form of replevin, is allowed as a substitute. However, replevin adds legal complications and

expense to the collection of secured property. Further, legal restrictions make it so difficult and expensive to obtain "deficiency" judgments that they are rarely sought. Louisiana allows wage assignments but effectively prohibits wage garnishment to repay consumer loans. It also restricts confessions of judgment and household goods security provisions.

In general, Louisiana laws deter credit collection by adding substantial legal process and expense to potential remedies. At the same time, however, Louisiana consumer credit rate ceilings are among the highest in the nation for all lenders.

In contrast, with Lake Charles, Louisiana, Little Rock-North Little Rock, Arkansas was selected for study because the Arkansas rate ceilings, at ten percent, are the lowest in the nation. At the same time, Arkansas does not place substantial restrictions on creditors' remedies. Self-help repossession, deficiency judgments, and blanket security are available. Wage assignments can be obtained and (limited) attorney's fees can be charged consumers who default on their debts.

Because the Arkansas and Louisiana markets were not restrictive in both rates and remedies, 750 consumers were interviewed in each local market area. In addition, 100 percent of the savings and loan associations, 92 percent of the commercial banks, 40 percent of the credit unions and 71 percent of the finance companies operating in each market were also interviewed (Exhibit 2).

Finally, in each market area, three to six local retailers who held their own credit were also interviewed. All interviews were conducted in early 1979.

EXHIBIT 2: CREDITORS' SURVEYED

Type of Creditor	Number of Creditors (percent surveyed) in WI	IL	AR	LA
Savings and Loan Associations	7(100%)	5(100%)	6(100%)	3(100%)
Commercial Banks	14(86%)	7(100%)	8(88%)	5(100%)
Consumer Finance Companies	18(72%)	13(77%)	0	31(71%)
Credit Unions	34(44%)	28(54%)	54(37%)	21(48%)
Automobile Sales Finance Companies	3(100%)	3(100%)	3(100%)	3(100%)

III. Creditor Use and Valuation of Remedies

A. Creditor Use of Remedies

Creditors were surveyed to determine their use and valuation of various collection remedies.

All creditors interviewed were asked many questions on their credit operations. Among them was a series of questions which asked them what collection actions (remedies) they would use on a hypothetical loan as it became more and more delinquent.

The questions asked various creditors about their collection activities are presented in Exhibit 3. Responses to those questions were analyzed to determine if systematic patterns of collection behavior and remedy use existed among creditors' operating in each state.

Theoretically, one would expect that creditors would be less likely to use "tough" collection remedies early in the debt collection process if loan rates were relatively high. If "tough" remedies were used early, the creditor would immediately stand to lose some customer goodwill. In addition, he would forego potentially valuable interest on debts that ultimately would have been voluntarily repaid. If loan rates were low, the second source of loss would be reduced; thus, creditors would expect to lose less by invoking collection remedies early.

Offsetting the potential losses from collection remedy use, the more effective the remedies available to creditors, the greater the potential gains to creditors from exercising them. Thus, one would expect creditors to use remedies more frequently when (1) remedies were less costly to use and (2) the remedies were effective in generating payments and recoveries on delinquent or defaulted debts.

EXHIBIT 3: Questions Asked Regarding Creditors' use of Remedies

The basic question asked of all creditors closely approximated the following set of questions--which were asked of commercial banks and credit unions.

> Now let us turn to your collection practices and policies. Please describe your typical policy concerning a delinquent unsecured personal loan with an outstanding balance of $1,200. Assume that payments have been made for six months, although two payments were 15 days late.
>
> What is your collection policy when this loan is from 10 days to 30 days delinquent? What would you typically do in the case of this example?
>
> _____
>
> _____
>
> During the period that the loan is from 30 days to 60 days delinquent, what would you typically do next, and when would you do it?
>
> _____
>
> _____
>
> And, as the loan continued to be delinquent, what would you typically do next, and when would you do it?
>
> _____
>
> _____

The set of questions asked savings and loan associations differed only in that they referred to a $1200 home improvement loan. For finance companies, less detail was obtained for short-term delinquencies (10-30 days) and more for longer term delinquencies (90 days and over).

These propositions can be summarized as:

(1) $NPV(I) = R - C_r - GWL - E(FC) > 0$

where the decision to invoke a remedy requires that

NPV(I), the net present value of invoking a remedy be positive, and

R = the present value of the expected increase in recoveries caused by invoking the remedy,

C_r = the present explicit costs of invoking remedy r,

GWL = the expected present value of the goodwill loss caused by invoking the remedy, and

E(FC) = the expected present value of foregone payments on debts that would be repaid even if the remedy were not invoked.

FC is positive because there is some probability that delinquent debtors will repay their debts and rates of charge on consumer loans typically exceed the creditors' discount rate--since costs of loan origination and collection are substantial in consumer lending. Thus, the greater the contractual revenues that are received on a credit extension, the more fully the creditor can amortize his costs of credit origination.

Based on equation (1) then, we would expect creditors to invoke remedies less frequently in states where permitted remedies were ineffective (R was low), costs of remedy implementation (C_r) were high, potential goodwill losses from invoking the remedy (GWL) were high, or allowable finance rates (and expected voluntary recovery rates) E(FC) were high.

Exhibit 4 presents survey data that summarize creditors' use of "tough" collection remedies in each state. Tough remedies were considered to include those where the creditor turned debt over to a third party or invoked legal action. Such action generally signified an unwillingness on the part of creditors to work out further accommodations with debtors on their own.

It is interesting to note in Exhibit 4 that "tough" actions were taken most quickly and frequently in Arkansas--a state with a low rate ceiling and effective remedies. Also, once the legal delay period was over in Wisconsin, Wisconsin creditors were second most likely to take "tough" actions. Thus, tough actions were (eventually) taken with the greatest frequency in the two states with the lowest rate ceilings. Conversely, they were taken least frequently in the state with the highest rate ceilings and costliest remedy process (Louisiana). These findings are consistent with our theoretical expectations.

B. Creditor Valuation of Remedies

Following questions on their potential collection actions, creditors were presented with a list and brief lay explanation of 14 key remedies. Each was then asked which remedies he would most like to have available if he could only use five of them. In this way creditors were forced to select the set of remedies that they valued most highly. The list of remedies from which creditors were asked to pick five is provided as Exhibit 5. The frequency with which each remedy was selected by various creditors is summarized in Exhibit 6.

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EXHIBIT 4: Creditor Use of Remedies

Frequency with which creditors take "tough action" to collect on delinquent or defaulted debts*

All Institutions

	Wisconsin		Illinois		Arkansas		Louisiana	
	Number	%	Number	%	Number	%	Number	%
Take tough action early*	0	0	1	2.9	5	15.1	1	2.7
Take tough action late*	37	80.4	23	65.7	22	66.7	21	56.8
Never take tough action	9	19.6	11	31.4	6	18.2	15	40.5
Total respondents	46	100	35	100	33	100	37	100

Commercial Banks

	Wisconsin		Illinois		Arkansas		Louisiana	
	Number	%	Number	%	Number	%	Number	%
Take tough action early	0	0	0	0	0	0	1	20
Take tough action late	8	66.7	5	71.4	6	85.7	4	80
Never take tough action	4	33.3	2	28.6	1	14.3	0	0
Total respondents	12	100	7	100	7	100	5	100

Credit Unions

	Wisconsin		Illinois		Arkansas		Louisiana	
	Number	%	Number	%	Number	%	Number	%
Take tough action early	0	0	1	6.7	5	25.0	0	0
Take tough action late	15	100.0	9	60.0	14	70.0	7	77.8
Never take tough action	0	0	5	33.3	1	5.0	2	22.2
Total respondents	15	100	15	100	20	100	9	100

Finance Companies

	Wisconsin		Illinois		Arkansas		Louisiana	
	Number	%	Number	%	Number	%	Number	%
Take tough action early	0	0	0	0	--	--	0	0
Take tough action late	8	61.5	7	70.0	--	--	9	45.0
Never take tough action	5	38.5	3	30.0	--	--	11	55.0
Total respondents	13	100	10	100	--	--	20	100

Saving and Loans

	Wisconsin		Illinois		Arkansas		Louisiana	
	Number	%	Number	%	Number	%	Number	%
Take tough action early	0	0	0	0	0	0	0	
Take tough action late	6	100	2	66.7	2	33.3	1	33.3
Never take tough action	0	0	1	33.3	4	66.7	2	66.7
Total respondents	6	100	3	100	6	100	3	

*Tough action tallies were based on free-response questions asking creditors what they would do if a slow-paying loan were 10-30 days past due, 30-60 days past due, and 60 days or more past due. "Early tough actions" were defined as occurring before a loan was 60 days past due. Late tough actions were defined as occurring after it was 60 days past due. Free response answers that were classed as tough actions included: filing of a legal action; turning the debt over to an attorney, collection agency, or credit bureau for collection; collecting from a cosignor, garnishing wages, invoking a wage assignment, or repossessing secured property; taking judgment to recover the security, or foreclosing on a debt; taking "every type of action," and "going after the debtor vigorously."

EXHIBIT 5: Questions Used to Ascertain Creditor Evaluation of Remedies

We would now like to talk about collection remedies. We would like to understand which groups of remedies--taken together--are most important to you to reduce your collection costs and to minimize your credit losses. If you had no remedies and could choose five remedies that you could always have available, which five would you choose from this group of 14.

1. LATE PAYMENT CHARGES. Legally allowed penalty charges to debtors for late payment--for example, $5, or 5% of delinquent monthly payment. ( )
2. ATTORNEY'S FEES CHARGES. Legal charges against a defaulting debtor for the creditor's costs of using attorneys to collect the debt. ( )
3. CONFESSION OF JUDGMENT (COGNOVIT NOTE). Procedure whereby a debtor agrees to a judgment against him in case he defaults, without requiring use of formal legal proceedings. ( )
4. REPOSSESSION (in Louisiana, replevin). Legal seizure, initiated by a creditor, of property securing a debt. ( )
5. DEFICIENCY JUDGMENT. A judgment or decree against the debtor for any part of a debt not recovered by sale of the collateral. ( )
6. BLANKET SECURITY. A lien taken by a creditor on all of the household goods of a debtor. ( )
7. WAIVER OF STATUTORY EXEMPTION. A clause in a note waiving the laws shielding certain personal property from a creditor's claims. ( )
8. GARNISHMENT. A legal procedure whereby some of a debtor's wages or other assets held by employer or other third party may be assigned to the creditor. ( )
9. WAGE ASSIGNMENT. A voluntary assignment of wages made by a debtor to the creditor at the time a loan is made, that becomes effective in case of default. ( )
10. ACCELERATION UPON DEFAULT. A clause permitting the creditor to claim the entire balance due in the event of default on a credit assignment. ( )
11. REAFFIRMATION OF DEBTS AFTER BANKRUPTCY. An agreement made by a debtor, after being declared bankrupt, to repay a debt even though he was freed of the debt by the bankruptcy proceedings. ( )
12. CO-SIGNOR AGREEMENT. An agreement whereby parties other than the principal debtor agree to pay a debt if the debtor defaults. ( )
13. CONTACTING EMPLOYERS AND RELATIVES. A creditor's right to contact employers, relatives, or others in an effort to locate a delinquent debtor or to encourage payment of a delinquent balance. ( )
14. FORECLOSURE. Legal seizure of property to liquidate a defaulted debt secured by a mortgage on the property. ( )

Analysis of Exhibit 6 indicates that different classes of creditors assigned different values to different remedies--depending upon the nature and mix of their consumer loan business. Thus, savings and loan associations highly valued foreclosures, finance companies valued reaffirmation of debts after bankruptcy, and credit unions valued wage assignments more highly than other creditors.

Some remedies particularly "blanket security" and "waivers of statutory exemption on household goods" were notably unpopular with all creditors. Other remedies, such as garnishment, late payment charges, attorney's fees, and repossession were highly valued by most types of creditors.

Confession of judgment clauses were not highly valued in general. However, they were allowed only in Illinois--where they were highly valued by a number of creditors. This suggests that past creditor experience with various remedies affected the relative rankings shown in Exhibit 6.

IV. Consumer Valuation of and Attitudes Toward Remedies

A. Risk Classification of Consumers

All consumers surveyed were asked numerous questions about their households' financial status, debt use, and attitudes toward debt. Included in those questions was a question designed to determine the likelihood with which consumers thought they would experience debt repayment problems in the near future.

Consumers were defined to be of high subjective risk if they responded "very likely" or "somewhat likely" to a question asking

EXHIBIT 6: Creditors' Valuation of Remedies

(Percent of creditors selecting each remedy when they could choose only 5 of 14 remedies)

Remedy	Creditor					
	Total (average for five creditors)	Commercial Banks	Fin. Cos.	Credit Unions	S&L's	Retailers
Garnishment	62.4%	65%	87%*	72%*	14%	74%
Late Payment Charges	49.6	52	42	27	90	37
Attorneys' Fee Charges	48.0	13	31	50	67	79*
Repossession	46.6	77*	40	52	38	26
Cosignor Agreements	44.8	48	38	67	24	47
Foreclosure	43.0	52	40	18	100*	5
Acceleration	39.4	48	18	23	71	37
Reaffirmation	36.0	23	49	45	5	58
Deficiency Judgments	32.8	61	31	23	38	11
Wage Assignments	27.8	16	38	43	5	37
Contacting Non-debtors	25.0	3	29	35	5	53
Confession of Judgment**	23.2	29	29	13	29	16
Blanket Security	7.4	6	18	8	0	5
Waiver of Exemption	2.6	3	7	3	0	0

*Remedy most preferred by creditors of this type.

**In Illinois, where this remedy is allowed on a restricted basis, it was selected by 38% of all creditors, including 43% of banks, 50% of finance companies, 20% of credit unions, 60% of savings and loans, and 33% of retailers.

Note: The seven most preferred remedies for each creditor are underlined.

M22.	"How likely do you think it is that you might have trouble repaying some of your debts in the next year or two. Would you say it is...	Very likely Somewhat likely Not very likely Not at all likely	[ ] [ ] [ ] [ ]

They were deemed to have low subjective risk if they responded "not at all likely" or "not very likely" to that question.

Consumers also were asked about their previous payment experiences. In particular, they were asked

M9.	In making payments on your debts in 1977 or 1978, did you make all the payments the way they were scheduled, did you get behind, or did you make payments that were larger than required or more frequent than scheduled?	1. As scheduled 2. Got behind 3. Larger or faster 4. Both got behind and paid ahead 5. No debts	[ ] [ ] [ ] [ ] [ ]

Because consumers that get behind on their payments often receive bad credit ratings that hurt their future ability to obtain credit, people who got behind on their payments (even if they also paid ahead) were defined as being of high "objective risk." In addition to raising their potential risk in creditors' eyes, such people would have the most knowledge of what remedies creditors in their state actually exercised. The limited number of people who both "got behind and paid ahead" on their debts was included in this category because some of them might also have experienced creditors' collection remedies--particularly because some may have paid "ahead" only by refinancing their debts or taking out a debt consolidation loan.

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B. Consumer Valuation of Remedy Protections

Consumers were asked a series of questions to determine how much they would pay for various remedy protections (Exhibit 7). Because of a pretest experiment, it was decided that this information could be obtained more effectively if consumers were asked how much they were willing to pay at the present time "in addition[al]" charges to protect themselves against the exercise of various remedies.[7]

It was hypothetized that consumers would be more willing to pay for various remedy protections if (1) they had high subjective risk, and (2) if they had high objective risk--particularly if remedies in that state were relatively onerous. It was also hypothesized that consumers would be less willing to pay for various remedy protections if (1) they had high objective risk and particular remedies were highly restricted in that state, or if (2) remedies in a state were generally highly restricted or little used.

Statistics that analyze consumers' willingness to pay for protection against late charges, attorneys fees, repossession, and deficiency judgment are presented in Exhibits 8, 9, 10, and 11. Because the majority of people were willing to pay "zero" for remedy protections (probably because they had low expectations that they would default on a loan), we focused on that group in making interstate comparisons. By treating consumer responses as binomial variables (either zero or not), we were able to make use of the fact that, for large numbers of observations, the binomial distribution can be approximated by a normal distribution. This allowed us to conduct t-tests to determine if the percentage of zero responses in any one state was significantly different from the percentage of zero responses in all other states combined.

EXHIBIT 7: Questions on Consumers Willingness to Pay for Remedy Protections

The following interview sequence was asked to determine how much people are willing to pay for various creditor remedy protections.

At times some people have difficulty repaying loans. This could happen because of unexpected layoffs, job losses, sickness, death, or family financial problems. When people fall behind on their payments, lenders may use a number of legal "remedies" to try to get their money back. We are interested in how much extra money people might be willing to pay in order to borrow money from a lender who agreed in writing that he would not use certain "remedies" in collecting money owed.

Suppose you borrowed $4,000 for 48 months for a new car. You would have to pay back approximately $1,000 in finance charges on that loan in addition to the $4,000 you borrowed.

M18. We are interested in how much extra in a one-time charge or fee you would be willing to pay to borrow from a lender who would give you a loan contract that would not make you pay his attorney's fees (which might be as much as $300) if he had to sue you to collect on the loan.

$ _____EXTRA

M19. Many lenders can assess "late charges" if your payment is more than two (2) weeks late. If a lender would agree to assess a late charge of $1 rather than $5 for each payment overdue, how much extra would you be willing to pay in a one-time charge or fee to obtain a $4,000 48-month loan from such a lender?

$ _____EXTRA

If a borrower stopped paying on an auto loan when he still owed $2,000 and the car was worth only $1,500, the lender can take back the car and then sue for the extra $500.

M20. How much extra would you be willing to pay in a one-time charge or fee to obtain a $4,000, 48-month new car loan from a lender who agreed that if you stopped paying, he could only sue for the balance due on the loan ($2,000) but could not take back the car?

$ _____EXTRA

EXHIBIT 7 (continued)

M21. Now suppose the lender agreed that if the borrower stopped paying, the lender would only take back the card (worth $1,500) but would not sue for the difference ($500). How much extra in a one-time charge or fee would you pay for such an agreement?

$ _____ EXTRA

The distribution of zero responses was important both because it indicated how many people were totally unwilling to pay for specific remedy protections (and thus perceived no benefit to them from various protections) and because it had a major effect on estimates of the mean amount that people were willing to pay for various protections.

Calculations of the mean amount people were willing to pay for various remedy protections are presented in Exhibits 8 to 11. The grand mean includes all respondents except those that gave either uncodable answers or answers that were unrealistically large.[8] It was necessary to eliminate unrealistically large responses from calculations of the grand mean because a few consumers did not give thoughtful responses to the questions, and a few widely unrealistic responses could have a major effect on the relatively small grand mean estimates.

The grand mean estimates we obtained were highly influenced by the large proportion of the public that said they would pay nothing extra for a remedy. In order to see if people who were willing to pay for remedy protections were willing to pay more or less in various states, zero responses were eliminated, and "adjusted means" were calculated. The adjusted means showed the average value of the remedy to those people who were willing to pay for that protection.

Finally, calculations were made of the percentage of respondents that was willing to pay non-zero amounts for various remedy protections, even if those amounts were unrealistically high. This percentage, plus the percentage that was not willing to pay anything adds to less than 100 percent because some people did not answer the question or did not know how much they were willing to pay.

Exhibit 8: Consumers' willingness to pay for protection against high late charges

All People

	Full Sample $	Wisconsin $	Wisconsin % zero/t	Illinois $	Illinois % zero/t	Arkansas $	Arkansas % zero/t	Louisiana $	Louisiana % zero/t
Grand Mean	$ 6.77	$ 6.23	72.7%	$ 9.44	69.0%	$ 7.18	72.6%	$ 3.35	80.8%
Adjusted Mean	33.80	30.09	-.5288	37.51	-3.570*	34.35	-.5266	30.39	+5.656*
Percent Nonzero	18.8%	19.2%		23.4%		19.6%		10.9%	
High Objective Risk									
Grand Mean	10.10	5.17	67.0%	11.93	55.9%	14.13	57.4%	8.07	73.8%
Adjusted Mean	31.58	19.69	+1.346	34.60	-1.414	40.80	-1.092	43.85	+1.849*
Percent nonzero	29.6%	27.4%		29.4%		36.1%		19.0%	
Low Objective Risk									
Grand Mean	6.34	6.55	74.7%	9.52	71.2%	6.08	76.0%	2.84	82.6%
Adjusted Mean	34.46	32.04	-.938	39.45	-3.090*	32.72	+.013	30.39	+4.644*
Percent Nonzero	17.4%	19.3%		22.6%		17.7%		9.0%	
High Subjective Risk									
Grand Mean	13.23	12.47	58.6%	15.85	54.7%	15.43	51.8%	6.08	64.9%
Adjusted Mean	37.16	36.04	+.421	40.11	-.538	38.58	-1.189	25.53	+1.619
Percent Nonzero	32.3%	32.2%		35.9%		35.9%		21.6%	
Low Subjective Risk									
Grand Mean	5.89	5.61	74.3%	8.41	71.7%	5.97	72.6%	2.75	84.2%
Adjusted Mean	32.67	28.97	-1.505	36.37	-3.502	32.93	+.324	30.39	+4.033*
Percent Nonzero	17.0%	18.1%		21.7%		17.4%		8.7%	

Objective risk	Total Willing to Pay**		Willing to Pay Nothing				Willing to Pay Something			
	Zero	Something	WI	IL	AR	LA	WI	IL	AR	LA
Low	1859	425	525	437	421	476	136	139	98	52
High	221	106	71	57	62	31	29	30	39	8
	χ^2 = 62.969(.0000)*		χ^2 = 14.825(.0014)*				χ^2 = 8.957(.0299)*			
Subjective risk										
Low	2344	523	670	622	510	542	163	188	116	56
High	226	129	51	70	57	48	28	46	39	16
	χ^2 = 32.817(.0000)*		χ^2 = 5.607(.1324)				χ^2 = 6.256(.0998)*			

*Significant at the 90 percent (two-tailed) confidence level.
**Nonresponses are not included.

Exhibit 9: Consumers' willingness to pay for protection against assessment of creditors' attorneys' fees

All People

	Full Sample $	Wisconsin $	Wisconsin % zero/t	Illinois $	Illinois % zero/t	Arkansas $	Arkansas % zero/t	Louisiana $	Louisiana % zero/t
Grand Mean	$15.69	$16.85	71.4%	$18.21	69.4%	$16.77	69.6%	$ 9.47	80.4%
Adjusted Mean	81.27	82.98	-.7815	75.83	-2.418*	81.47	-1.865*	94.55	+6.041*
Percent nonzero	18.4%	19.1%		23.3%		19.5%		9.6%	
High Objective Risk									
Grand Mean	20.76	17.14	68.9%	28.75	64.7%	21.31	57.4%	9.47	78.6%
Adjusted Mean	79.33	71.52	+.9149	104.72	-.1638	65.36	-2.030*	72.00	+2.150*
Percent nonzero	25.4%	24.5%		25.5%		31.5%		11.9%	
Low Objective Risk									
Grand Mean	14.84	17.23	72.3%	18.81	70.4%	15.91	71.8%	6.48	81.9%
Adjusted Mean	81.50	84.05	-1.206	79.47	-2.291	81.84	-1.273	79.26	+5.450*
Percent nonzero	17.4%	19.2%		23.5%		18.1%		8.0%	
High Subjective Risk									
Grand Mean	27.16	27.90	60.9%	25.80	58.6%	28.79	50.0%	26.41	68.9%
Adjusted Mean	87.10	89.50	+.4877	78.11	-.0146	78.28	-2.139*	130.00	+2.075*
Percent nonzero	29.1%	27.6%		32.8%		33.6%		17.6%	
Low Subjective Risk									
Grand Mean	13.96	15.64	72.7%	16.61	71.7%	15.18	73.1%	6.74	83.2%
Adjusted Mean	78.85	81.85	-1.554	73.69	-1.825*	82.39	-2.461*	80.49	+6.230*
Percent nonzero	16.9%	18.2%		21.9%		17.4%		8.1%	

Objective risk	Total Willing to Pay**		Willing to Pay Nothing				Willing to Pay Something			
	Zero	Something	WI	IL	AR	LA	WI	IL	AR	LA
Low	1810	425	508	432	398	472	135	144	100	46
High	234	91	73	66	62	33	26	26	34	5
	χ^2 = 13.678(.0002)*		χ^2 = 16.211(.0010)*				χ^2 = 8.563(.0357)*			
Subjective risk										
Low	2301	522	656	622	487	536	164	190	116	52
High	234	116	53	75	55	51	24	42	37	13
	χ^2 = 40.706(.0000)*		χ^2 = 5.304(.1508)				χ^2 = 7.556(.0561)*			

*Significant at the 90 percent (two-tailed) confidence level.
**Non-responses are not included.

Exhibit 10: Consumers' willingness to pay for protection against repossession

All People

	Full Sample $	Wisconsin $	Wisconsin % zero/t	Illinois $	Illinois % zero/t	Arkansas $	Arkansas % zero/t	Louisiana $	Louisiana % zero/t
Grand Mean	$17.28	$15.90	74.2%	$21.55	69.1%	$20.90	71.4%	$ 9.33	81.6%
Adjusted Mean	92.68	83.66	+.401	87.40	-3.826*	105.40	-1.609	111.23	+6.157*
Percent Nonzero	17.6%	17.4%		23.2%		18.6%		9.5%	
				High Objective Risk					
Grand Mean	32.61	28.47	67.0%	40.19	59.8%	29.79	57.4%	33.15	76.2%
Adjusted Mean	111.87	98.17	+.9911	134.5	-.8119	72.65	-1.450	210.00	+2.056*
Percent Nonzero	26.5%	27.4%		25.5%		31.5%		14.3%	
				Low Objective Risk					
Grand Mean	15.30	13.62	76.8%	22.40	70.0%	18.21	75.6%	6.86	83.7%
Adjusted Mean	88.40	74.91	+.5034	92.20	-3.903*	97.83	-.359	93.92	+5.345*
Percent Nonzero	16.5%	17.1%		23.3%		17.5%		7.5%	
				High Subjective Risk					
Grand Mean	39.48	47.16	52.9%	41.47	53.9%	44.26	52.7%	18.05	68.9%
Adjusted Mean	114.42	110.97	-.688	103.67	-.614	129.83	-.841	133.13	+2.578*
Percent Nonzero	32.1%	39.1%		35.9%		31.8%		17.6%	
				Low Subjective Risk					
Grand Mean	14.19	12.86	76.5%	18.17	72.2%	17.66	75.1%	6.97	84.5%
Adjusted Mean	85.59	76.68	-.134	81.82	-3.057*	98.68	-1.071	97.24	+5.886*
Percent Nonzero	15.7%	15.4%		21.1%		16.7%		7.8%	

Objective risk	Total Willing to Pay**		Willing to Pay Nothing				Willing to Pay Somthing			
	Zero	Something	WI	IL	AR	LA	WI	IL	AR	LA
Low	1863	403	540	430	411	482	120	143	97	43
High	226	395	71	61	62	32	29	26	34	6
	χ^2 = 24.476(.0000)*		χ^2 = 15.525(.0014)*				χ^2 = 7.002(.0718)*			
Subjective risk										
Low	2361	483	690	627	500	544	139	183	111	50
High	224	128	46	69	58	51	34	46	35	13
	χ^2 = 74.8381(.0000)*		χ^2 = 8.909(.0305)*				χ^2 = 1.087(.7800)			

*Significant at the 90 percent (two-tailed) confidence level.
**Non-responses are not included.

Exhibit 11: Consumers' willingness to pay for protection against deficiency judgments

All People

	Full Sample	Wisconsin		Illinois		Arkansas		Louisiana	
	$	$	% zero/t	$	% zero/t	$	% zero/t	$	% zero/t
Grand Mean	$16.66	$13.50	74.7%	$19.82	69.4%	$18.64	73.1%	$14.43	83.6%
Adjusted Mean	90.35	74.57	-.0102	78.86	-4.434*	95.73	-1.152	170.14	+7.070*
Percent Nonzero	16.9%	16.5%		23.3%		17.6%		8.0%	
				High Objective Risk					
Grand Mean	28.29	28.48	72.6%	33.64	59.8	34.38	56.5%	10.00	81.0%
Adjusted Mean	103.52	70.91	+2.017*	112.57	-1.296	98.19	-2.191	78.00	+6.510*
Percent Nonzero	24.9%	20.8%		25.5%		33.3%		11.9%	
				Low Objective Risk					
Grand Mean	13.83	12.53	76.5%	20.26	70.4%	14.30	76.9%	7.94	85.2%
Adjusted Mean	81.98	69.70	-.435	81.03	-4.351*	84.33	-.139	122.59	+5.942*
Percent Nonzero	15.7%	16.8%		23.5%		15.7%		6.1%	
				High Subjective Risk					
Grand Mean	35.38	32.68	58.6%	31.77	54.7%	44.14	50.9%	32.34	74.3%
Adjusted Mean	106.13	102.12	+.161	80.11	-.955	110.95	-1.206	230.00	+3.416*
Percent Nonzero	29.3%	27.6%		35.9%		33.6%		13.5%	
				Low Subjective Risk					
Grand Mean	13.42	11.70	76.7%	16.89	72.4%	14.94	77.2%	9.53	86.3%
Adjusted Mean	82.28	70.38	-.746	73.91	-4.190*	90.21	-.2922	141.95	+2.091*
Percent Nonzero	15.2%	15.3%		21.4%		15.3%		6.4%	

Objective risk	Total Willing to Pay**		Willing to Pay Nothing				Willing to Pay Something			
	Zero	Something	WI	IL	AR	LA	WI	IL	AR	LA
Low	1887	348	538	432	426	491	118	144	87	35
High	233	89	77	61	61	34	22	26	36	5
	χ^2 = 21.061(.0000)*		χ^2 = 14.454(.0023)*				χ^2 = 12.103(.0070)*			
Subjective risk										
Low	2390	467	692	628	514	556	138	186	102	41
High	232	117	51	70	56	55	24	46	37	10
	χ^2 = 60.458(.0000)*		χ^2 = 5.524(.1372)				χ^2 = 6.528(.0886)*			

*Significant at the 90 percent (two-tailed) confidence level.
**Non-responses are not included.

1. Overall Results

Analysis of the data presented in Exhibits 8-11 allows us to draw the following conclusions. Overall, very few people were willing to pay anything for protection against various remedies. For the full population, only 16.9 to 18.8 percent were willing to pay for such protection, depending on the remedy involved. Even among people with high subjective risk only 29.1 to 32.3 percent were willing to pay for various remedy protections. Thus, full sample results closely reflected results applicable to the much larger group of people with low subjective risk (where only 15.2 to 17.0 percent were willing to pay for remedy protections).

High objective risk people, interestingly enough, were less frequently willing to pay for various remedy protections than high subjective risk people. Seemingly, some people who had been behind on their debts either did not expect to get behind on their debts in the future or had not experienced burdensome remedies.

Consumers, in general, were most willing to pay something for protection against high late charges (18.8 percent) and least willing to pay for protection against deficiency judgments (16.9 percent). The average amount they were willing to pay was relatively low--ranging from $6.77 for late charge protection to $17.28 for protection against repossession. Thus, on average, consumers were willing to pay only 0.2 to 0.4 percent more (on a $4,000 contract) for any one remedy protection.

Even when only consumers willing to pay for remedy protection were considered, the average amounts such consumers were willing to pay for such protection were relatively low--ranging from $33.80 for late

charge protection to $92.68 for protection against repossession. Thus, even those consumers, on average, were willing to pay only 0.8 to 2.3 percent extra for protection against various specific remedies.

2. Interstate Differences

The χ^2 tests at the bottom of Exhibits 8 to 11 indicate that significant interstate differences exist in subjective and objective risk distributions associated with consumers' willingness or unwillingness to pay for remedy protection. Also, analysis of differences in the number of people willing or unwilling to pay for various remedy protections--(reported at the top of each table) show that actual differences in people's willingness to pay for remedy protections are strongly correlated with state remedy environments and their past experience.

Of particular interest is the fact that, for each remedy considered, Louisiana residents were least willing to pay for various remedy protections. This is pertinent because Louisiana creditors were least likely to pursue "tough" remedies--possibly because the Louisiana legal environment is highly restrictive while rate ceilings are high.

In contrast with Louisiana, Illinois had the lowest percentage of residents that was unwilling to pay for various remedy protections. Illinois remedies, in general, were among the least favorable to the consumer. In Illinois, the more permissive remedy environment, per se, may have made consumers more willing to pay for remedy protection than in Louisiana--even though Illinois rates were high and creditors did not exercise tough remedies very frequently.

The overall Illinois results primarily reflected the views of low subjective risk consumers. The low subjective risk group in Illinois was the only risk category of borrowers that always showed a significantly greater willingness to pay for remedy protections than similar consumers in other states. This finding suggests that differences in Louisiana and Illinois results may have primarily reflected differences in the legal environment, per se, rather than differences in experience--since differences in past remedy experience would be expected to affect high-risk consumers more than low-risk consumers.

Nonetheless, differences in past remedy experience clearly had a substantial impact on consumers in Arkansas and Wisconsin. Arkansas consumers, who lived in the "toughest" remedy environment, were uniformly most frequently willing to pay for remedy protection after they had previously fallen behind on their debts (i.e. if they were of high objective risk). However, Arkansas consumers who had not previously fallen behind on their debts (low objective risk consumers) were not significantly more willing to pay for remedy protections in Arkansas than elsewhere. Clearly, Arkansas consumers learned about the "tough" collection practices in their state through past experience.

Taken altogether, Arkansas consumers were more frequently willing to pay for remedy protections than consumers in Wisconsin and Illinois--where statutory restrictions on remedies were greater, but (except for the high objective risk borrowers) were less frequently willing to pay for remedy protections than Illinois consumers (where statutory restrictions on remedies were least restrictive).

Wisconsin borrowers, like Arkansas borrowers, also seemed to learn from experience. In particular, high objective risk borrowers in Wisconsin had obviously learned that late charges were severely limited in Wisconsin. If they had previously been behind on their debts, Wisconsin borrowers were willing to pay much less for late charge protection ($5.17 versus $8 to $14) than previously delinquent borrowers in other states. In contrast, low objective risk borrowers in Wisconsin (who had not fallen behind on their debts), were willing to pay substantially more for late charge protection ($6.55) than both high objective risk borrowers in Wisconsin and low objective risk borrowers in other states.

Some evidence of learning by experience also exists with regard to attorney's fees. There again, high objective risk borrowers in Wisconsin were willing to pay less for such protection than borrowers in general ($17.14 in Wisconsin versus $20.76 in all states combined). Further, high objective risk borrowers were not willing to pay more for protection against creditors' attorneys fees than low-risk Wisconsin borrowers. Seemingly, Wisconsin borrowers who had previously fallen behind on their debts did not worry (more than Wisconsin borrowers in general) about paying creditors' attorneys fees. This makes sense since attorney's fees cannot be charged on consumer debts in Wisconsin. In contrast, in every other state, high objective risk borrowers, on average, were willing to pay substantially more for protection against attorney's fees than borrowers who had not previously fallen behind on their debts.

B. Consumer Attitudes Towards Remedies

In addition to questions regarding consumers' willingness to pay for various remedy protections, each questionnaire also contained a set of questions designed to determine consumer attitudes toward various remedies. Those questions and summaries of consumers' responses are shown in Exhibit 12. Exhibits 13 through 22 provide data on the acceptability ranking of each remedy, both in total and by each risk group in every state.

Overall, there were four out of the ten remedies that consumers generally found acceptable, and two where the number of consumers that felt they should not be permitted roughly equalled the number that thought they should. Four remedies were, on balance, unpopular with consumers.

It is interesting to note that the relative (popularity) rank of the remedies varied little according to either the riskiness of the consumer or according to the state of residence. This held true even though, with the exception of refinancing, generally a lower percentage of high-risk consumers said that particular remedies were acceptable. Overall, the least popular remedies were those that would enable a creditor to take and sell household goods that were not purchased with the credit. The remedies implied by this question are "blanket security" and "waiver of exemption" provisions. Interestingly enough, these are also the remedies that were least favored by creditors. However, the unpopularity of these remedies does not appear to arise from consumers' fear that the remedies will be exercised against them (Exhibit 19). Only 13.1 percent of those that did not expect future credit difficulty said such remedies were acceptable, while 18.8 percent who did expect

Exhibit 12: Questions on Consumers' Views of Remedies

The following question sequence was used to elicit consumer attitudes on what remedies they deemed to be appropriate. The percentage of consumers that responded yes or no to each question is also recorded.

Sometimes people have difficulty in paying their debts and fall behind in their payments. When this happens, creditors have several courses of action that they may follow. In your opinion, which of these should a creditor be permitted to do to collect a debt that is owed?

	YES(%)	NO(%)	DON'T KNOW OR NOT AVAILABLE(%)
A. CHARGE AN EXTRA FEE IF PAYMENTS ARE LATE BY 30 DAYS OR MORE	75.7%	20.3%	4.0%
B. RENEGOTIATE THE LOAN WITH LOWER MONTHLY PAYMENTS, BUT AT A HIGHER INTEREST RATE	46.8	44.7	8.6
C. CALL THE CONSUMER AT REGULAR INTERVALS TO REMIND HIM THAT THE DEBT MUST BE PAID	60.2	35.5	4.3
D. CONTACT THE CONSUMER'S EMPLOYER ABOUT THE DEBT OWED	27.7	67.4	4.9
E. TAKE BACK THE ITEM PURCHASED ON CREDIT	70.1	24.0	5.9
F. TAKE BACK AND SELL THE ITEM PURCHASED, THEN SUE FOR ANY AMOUNT OWNED BUT NOT COVERED BY SALE	33.4	56.4	10.1
G. IF NO PARTICULAR ITEM WAS PURCHASED WITH THE LOAN, TAKE HOUSEHOLD GOODS AND SELL THEM TO PAY OFF THE DEBT	13.9	79.6	6.5
H. ASK AN EMPLOYER TO TAKE PART OF THE CONSUMER'S WAGE TO PAY OFF THE DEBT	39.4	54.5	6.1
I. LEGALLY FORCE THE CONSUMER TO PAY THE CREDITOR'S LEGAL FEES IF THE CREDITOR HAS TO SUE	43.3	43.9	12.8
J. LEGALLY FORCE THE CONSUMER TO USE MONEY IN SAVINGS ACCOUNTS TO PAY OFF THE DEBTS	64.8	28.6	6.7

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Exhibit 13: Percent of consumers responding that late fees were acceptable

	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All People	75.7	1	73.3	1	-2.087*	72.7	1	-2.051*	77.5	1	+1.365	81.2	2	+4.200*
High sub. risk	67.2	1	66.7	1	-.111	65.6	1	-2.709*	63.6	1	-.909	75.7	2	+1.840*
Low sub. risk	77.2	1	74.6	1	-2.189*	49.1	4T	-3.002*	80.3	1	+2.230*	82.8	2	+4.050*
High obj. risk	73.2	1	75.5	1	+.641	73.5	1	+.092	70.4	1	-.773	73.8	2	+.096
Low obj. risk	78.5	1	75.7	1	-2.198*	73.8	1	-3.227*	80.7	1	+1.379	85.4	1	+5.021*

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1924	262	2379	268
No responses	446	90	584	117
	$\chi^2 = 8.407(.0037)$*		$\chi^2 = 22.835(.0000)$*	

NOTE: T refers to a tie

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 14: Percent of consumers indicating that refinancing was acceptable

	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All People	46.8	5	43.9	6	-1.629	48.5	5	+2.780*	48.3	5	+.974	46.5	5	-.179
High sub. risk	47.4	5	34.5	6T	-2.813*	44.5	5	-.779	57.3	3T	+2.456*	52.7	4	+1.012
Low sub. risk	46.9	5	44.9	6	-1.421	49.1	4T	+1.527	47.0	6	+.0664	46.6	5	-.171
High obj. risk	46.1	5	39.6	6	-1.605	48.0	5	+.464	49.1	5	+.740	50.0	4	+.533
Low obj. risk	47.7	5	43.8	6	-2.448*	50.0	5	+1.321	50.0	6	+1.235	47.7	5	+.028

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1167	165	1444	189
No responses	1091	178	1374	186
	χ^2 = 1.385(.2391)		χ^2 = .063(.8015)	

NOTE: T refers to a tie

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 15: Percent of consumers indicating that regular phone calls were acceptable

	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All People	60.2	4	66.6	4	+5.037*	54.4	4	-4.728*	62.3	4	-1.371	57.3	4	1.800*
High sub. risk	55.1	3	57.5	3	+.494	57.0	2	+.522	51.8	5	-.714	54.1	3	-.206
Low sub. risk	61.0	4	67.5	4	+4.909*	53.9	3	-4.968*	64.3	4	+1.990*	57.9	4	-1.770*
High obj. risk	55.3	3	53.8	4	-.376	53.9	3	-.331	63.0	3	1.943	42.9	5	-1.716
Low obj. risk	61.0	4	65.9	4	+3.174	53.6	4	-4.299	61.4	4	.196	62.7	4	+.939

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1493	198	1878	220
No responses	868	153	1081	164
	$\chi^2 = 5.777(.0162)$*		$\chi^2 = 5.285(.0215)$*	

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 16: Percent of consumers indicating that employer contacts were acceptable

	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All people	27.7	9	24.6	9	-2.707*	29.2	9	+1.268	28.3	9	+.437	29.2	9	+1.034
High sub. risk	25.1	9	10.3	10	-4.508*	27.3	9	+1.870*	19.1	8	-1.796	47.3	5	+3.707*
Low sub. risk	27.9	9	25.7	9	-1.778*	29.5	9	+1.204	29.4	9	+.967	27.3	9	-.378
High obj. risk	19.6	9	12.3	9	-2.531*	25.5	9	+1.680	16.7	9	-.933	31.0	6T	+1.713
Low obj. risk	26.6	9	23.6	9	-2.204*	26.4	9	-.168	28.3	9	+.993	29.0	9	+.392

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	652	70	860	100
No responses	1689	282	2071	285
	$x^2 = 9.491(.0021)$*		$x^2 = 1.715(.1902)$	

NOTE: T refers to a tie

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 17: Percent of consumers indicating that repossession was acceptable

	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All people	70.1	2	72.0	2	+1.520	57.4	2	-10.161*	73.4	2	+2.359*	81.7	1	+8.786*
High sub. risk	61.2	2	62.1	2	+.197	52.3	3	-2.449*	58.2	2	-.743	79.7	1	+4.184*
Low sub. risk	71.8	2	73.2	2	+1.108	58.2	1	-9.978*	76.6	2	+3.239*	83.2	1	+8.281*
High obj. risk	69.0	2	71.7	2	+.725	60.8	2	-2.046*	68.5	2	-.127	83.3	1	+2.540*
Low obj. risk	72.0	2	72.5	2	+.350	57.2	2	-8.919*	75.3	2	+1.974*	84.2	2	+8.531*

Distribution of Responses

	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1763	247	2211	244
No responses	556	98	698	134
	$\chi^2 = 2.947(.0860)$*		$\chi^2 = 22.618(.0000)$*	

*Indicates significance at the 90 percent (two-tailed level.

Exhibit 18: Percent of consumers indicating that deficiency judgments were acceptable

Class	Full Sample % Yes	Rank	Wisconsin % Yes	Rank	t	Illinois % Yes	Rank	t	Arkansas % Yes	Rank	t	Louisiana % Yes	Rank	t
All people	33.4	8	33.7	8	+.863	35.8	8	+2.564*	32.0	8	-.047	31.2	7	-1.173
High sub. risk	28.1	8	31.0	8	+.513	30.5	8	+.721	18.2	9	−2.966*	35.1	9	+1.421
Low sub. risk	34.4	8	34.4	8	-.011	37.0	8	+1.882*	34.2	8	-.091	31.1	7	-2.036*
High obj. risk	27.4	8	31.1	7T	+2.548*	30.4	8	+.790	19.4	8	-2.350*	31.0	6T	+.530
Low obj. risk	34.4	8	33.4	8	-.651	37.5	8	+1.814*	35.9	8	+.844	30.9	7	-2.063*

Distribution of Responses

	By Objective Risk: Low Risk	By Objective Risk: High Risk	By Subjective Risk: Low Risk	By Subjective Risk: High Risk
Yes responses	842	98	1059	112
No responses	1374	231	1708	259
	$\chi^2 = 10.054(.0015)$*		$\chi^2 = 8.796(.0030)$*	

*Indicates significance at the 90 percent (two-tailed) level.

NOTE: T refers to a tie

Exhibit 19: Percent of consumers indicating that blanket security or waiver of exemption were acceptable

Class	Full Sample % Yes	Full Sample Rank	Wisconsin % Yes	Wisconsin Rank	Wisconsin t	Illinois % Yes	Illinois Rank	Illinois t	Arkansas % Yes	Arkansas Rank	Arkansas t	Louisiana % Yes	Louisiana Rank	Louisiana t
All people	13.9	10	12.8	10	-1.312	12.7	10	-1.112	12.7	10	-3.502	18.2	10	+.511
High sub. risk	18.8	10	19.5	9	+.197	12.5	10	-1.453	10.9	10	-2.827	36.5	8	+3.684*
Low sub. risk	13.1	10	12.3	10	-.919	19.0	10	+1.229	12.9	10	-.205	16.1	10	+2.374*
High obj. risk	12.3	10	8.5	10	-1.547	11.8	10	-.192	12.0	10	-.096	23.8	10	+1.897*
Low obj. risk	14.0	10	12.9	10	-.952	12.5	10	-1.220	12.6	10	-1.065	18.1	10	+2.997*

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	342	44	405	75
No responses	1980	302	2482	300
	$\chi^2 = .829(.3625)$		$\chi^2 = 8.960(.0028)$*	

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 20: Percent of consumers indicating that garnishment or wage assignment were acceptable

Class	Full Sample % Yes	Full Sample Rank	Wisconsin % Yes	Wisconsin Rank	Wisconsin t	Illinois % Yes	Illinois Rank	Illinois t	Arkansas % Yes	Arkansas Rank	Arkansas t	Louisiana % Yes	Louisiana Rank	Louisiana t
All people	39.4	7	40.1	7	-.512	46.6	6	+5.553*	38.0	7	-.912	30.0	8	-6.151*
High sub. risk	35.6	7	34.5	6T	-.243	37.5	7	+.543	29.1	7	-1.723	43.2	6T	+1.476
Low sub. risk	40.2	7	40.9	7	+.519	48.3	6	+5.669*	39.3	7	-.509	29.2	8	-6.770*
High obj. risk	32.4	7	31.1	7T	-.431	37.3	7	+1.210	30.6	7	-1.443	28.6	8T	-.575
Low obj. risk	39.4	7	41.1	7	+1.123	46.6	6	+4.177*	38.4	7	-.497	30.4	8	-5.257*

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	967	116	1238	142
No responses	1353	230	1657	237
	$\chi^2 = 7.770(.0053)$*		$\chi^2 = 3.641(.0564)$*	

NOTE: T refers to a tie

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 21: Percent of consumers indicating that attorneys fees were acceptable

Class	Full Sample		Wisconsin			Illinois			Arkansas			Louisiana		
	% Yes	Rank	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t	% Yes	Rank	t
All people	43.4	6	46.4	5	+2.341*	43.6	7	+.217	46.4	6	+1.958*	35.5	6	-4.969*
High sub. risk	38.1	6	44.8	5	+1.431	41.4	6	+.926	32.7	6	-1.387	32.4	10	-1.136
Low sub. risk	44.4	6	47.0	5	+1.880*	44.4	7	+.019	48.6	5	+2.490*	36.3	6	-4.734*
High obj. risk	41.6	6	48.1	5	+.789	44.1	6	+.600	38.0	6	- .279	28.6	8T	-1.948*
Low obj. risk	43.9	6	46.7	5	+1.657	43.8	7	-.045	50.2	5	+6.177	34.5	6	-5.325*

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1074	149	1367	152
No responses	1060	183	1316	209
	$\chi^2 = 3.197(.0738)$*		$\chi^2 = 9.606(.0019)$*	

NOTE: T refers to a tie

*Indicates significance at the 90 percent (two-tailed) level.

Exhibit 22: Percentage of consumers indicating that garnishment of savings accounts was acceptable

Class	Full Sample % Yes	Rank	Wisconsin % Yes	Rank	t	Illinois % Yes	Rank	t	Arkansas % Yes	Rank	t	Louisiana % Yes	Rank	t
All people	64.8	3	69.9	3	+6.427*	55.0	3	-7.585*	70.1	3	+3.673*	65.7	3	+.586
High sub. risk	51.6	4	52.9	4	+.201	50.8	4	-.232	57.3	3T	+1.396	43.2	6T	-1.602
Low sub. risk	66.8	3	71.8	3	+3.913*	55.6	2	-8.008*	72.7	3	+3.769*	68.8	3	+1.207
High obj. risk	53.1	4	55.7	3	+.635	49.0	4	-.965	53.7	4	+.339	54.8	3	+.231
Low obj. risk	66.7	3	71.4	3	+3.19	56.2	3	-7.557*	72.9	3	+.688	66.3	3	-.241

	Distribution of Responses			
	By Objective Risk		By Subjective Risk	
	Low Risk	High Risk	Low Risk	High Risk
Yes responses	1633	190	2058	206
No responses	689	150	835	160
	χ^2 = 28.004(.0000) *		χ^2 = 33.097(.0000)*	

T indicates a tie in ranking.

* Indicates significance at the 90 percent (two-tailed) level.

they might fall behind on their debts said such remedies were acceptable. Chi-squared tests indicate that this difference was significant.

Where the acceptability of remedies was not positively correlated with consumers' fear that they might default on their debts in the future, the unpopularity of certain remedies seemes to reflect more than consumers' latent fear that such remedies might be exercised against them. In particular, consumers' responses may reflect notions of "equity" or "fairness." They also may reflect consumer notions of how much the creditor-debtor relationship should be allowed to influence other aspects of the debtors' life.

In addition to blanket security (and waiver of exemptions on household property) other remedies that were, on balance, unpopular were those that allowed the creditor to contact the debtor's employer (only 27.7 percent would allow this remedy) or ask the employer to garnish the consumers wages (only 39.4 percent would allow this remedy). Generally, these potential remedies were significantly less popular among high-risk customers than for those of low risk. Seemingly, high-risk consumers disliked these remedies because they felt their exercise might jeopardize their jobs. However, low-risk consumers also disliked these remedies. Thus, consumer aversion to these remedies may have basically reflected feelings that creditors should not interfere with a debtor's work relationship.

The last remedy that was decidedly unpopular was the taking of deficiency judgments. Only 33.4 percent of the consumers surveyed thought that deficiency judgments should be permitted. This remedy may be unpopular because consumers believed that the retaking of the item

should settle the debt without further proceedings. At any rate, high-risk consumers clearly disliked it more than low-risk consumers.

At the other end of the spectrum, consumers felt that late fees, repossession, phone calls to the debtor, and garnishment of the debtor's savings accounts were highly acceptable remedies. Sixty to 75 percent of all consumers said these remedies should be permitted. Late charges were deemed to be the most widely acceptable of any remedy everywhere except Louisiana. In Louisiana, repossession ranked as the most acceptable remedy. It is interesting, though, that in Louisiana repossession (really replevin there) was not frequently used because it was cumbersome and costly for creditors to exercise.

Two remedies were borderline in terms of their acceptability with consumers: refinancing of outstanding debts to ease repayment terms, and the assessment of creditors' attorneys fees. In both cases, slightly less than half of the consumers found them acceptable. Nonetheless, more consumers found refinancing acceptable than unacceptable. Also, in contrast with other remedies, high-risk consumers were just as favorable toward refinancing as low-risk debtors (Exhibit 14). This probably reflected high-risk debtors' realization that refinancing could help debtors that were financially strapped by reducing their payments. Most likely, negative responses to the refinancing question were provoked because the question specified that the loan would be refinanced only at a higher rate. The disadvantage of the higher rate probably outweighed the advantage of a reduced payment burden in many consumers' eyes.

Systematic interstate variation in consumers' attitudes toward various remedies was not readily discernible. Even though significant

interstate differences existed for various remedies, no general pattern related to the remedy environment was observable. Possibly overall attitudes toward remedies represent consumer's notions of fair play more than their knowledge of their specific remedy environment.

Costs Versus Benefits of Creditors' Remedies

A. The Theoretical Issue

The major theoretical issue that exists with regard to creditors' remedies is whether creditors will use remedies that are more costly to consumers than they are beneficial to employers. Johnson[9] argues that they will not. He notes that if the remedy is worth more to consumers than it is to creditors, consumers would pay sufficiently more to obtain a credit contract without the remedy that creditors could gain by eliminating that remedy from their credit contracts. Thus, they would not use such remedies.

On the other side of the issue, the FTC's Bureau of Consumer Protection[10] argues that consumer credit contracts do not allow consumers to bargain away particular remedies because they are "contracts of adhesion." As a result, they believe that markets will not always work perfectly, that consumers cannot "bargain" the remedies away effectively and that consumers may only be able to avoid unpopular remedies if regulators intervene.

B. Empirical Findings

The data presented in this study provide some useful insights related to this argument. Basically what this study shows is that creditors do not highly value, and infrequently use, most of the remedies that are most disliked by consumers. Conversely, creditors are most likely to value and use those remedies that are most acceptable to consumers. Thus, consumers and creditors generally agree on what remedies are acceptable

and from the viewpoint of the creditor, desirable.

These findings are documented in Exhibit 23--which compares creditor and consumer rankings of various remedies. That exhibit shows that consumers dislike and creditors rarely value blanket security and waiver of exemption clauses. At the other extreme, creditors highly value, and consumers do not dislike, repossessions, foreclosure, and the assessment of late fees.

Conflicts of interest between consumers and creditors exist on garnishment, which creditors appear to value most highly of all remedies, and which consumers rank seventh out of ten remedies in acceptability. While 39.4 percent of consumers feel garnishment should be allowed, 54.5 percent are opposed to its use. Clearly, in this area, creditors and consumers have conflicting interests.

Lesser conflicts of interests occur with other employer contacts. Creditors generally do not value wage assignments nearly as highly as they value garnishment. However, wage assignment is one of the more important remedies for credit unions, retailers, and finance companies. Thus, the NCCF recommended that wage assignments be permitted on a restricted basis for certain types of credit. Further, while creditor contacts with employees, in general, are disliked by consumers, such contacts are not widely desired by creditors other than credit unions and retailers. Thus, except for "skip-tracing," it would appear that creditors, in general, may not widely use employer contacts.

Lesser degrees of conflict between consumers and creditors may exist with regard to several other remedies. Consumers dislike

Exhibit 23: Consumer vs. Creditor Evaluation of Remedies

Remedy	Consumer Acceptability			Consumer willingness to pay for protection			Creditor Popularity
	Rank	Percent Yes	Percent No	Percent Willing	Grand Mean (/$4000)	Adjusted Mean (/$4000)	Rank
Late fees	1 of 10	75.7%	20.3%	18.8%	0.2%	0.8%	2 of 14
Repossession or	2 of 10	70.1%	24.0%	17.6%	0.4%	2.3%	4 of 14
Foreclosure							6 of 14
Garnish savings	3 of 10	64.8%	28.6%				
Phone calls	4 of 10	60.2%	35.5%				
Refinance (at higher rate)	5 of 10	46.8%	44.7%				
Assess attorney's fees	6 of 10	43.3%	43.9%	18.4%	0.4%	2.0%	3 of 14
Garnish wages or	7 of 10	39.4%	54.5%				1 of 14
Wage assignment	7 of 10						10 of 14
Deficiency judgment	8 of 10	33.4%	56.4%	16.9%	0.4%	2.3%	9 of 14
Employer contacts	9 of 10	27.7%	67.4%				11 of 14
Blanket security	10 of 10	13.9%	79.6%				13 of 14
Waiver of exemption							14 of 14

deficiency judgments while creditors, particularly banks and savings and loan associations, feel they are useful. Similarly, consumers are lukewarm about the assessment of attorney's fees, while creditors, particularly retailers, credit unions, and savings and loan associations highly value such fees. Although one creditor has observed that "if you can't collect the balance, you can't collect attorney's fees," they still may be useful for collection purposes. In particular, this survey, and previous econometric evidence[11] that supports their efficacy suggests that attorneys fees may be helpful to many creditors--if only because solvent debtors would rather repay a loan promptly than pay extra charges for attorneys fees.

C. Resolving Conflicts

1. Resolving the theoretical conflict.

The data presented in this study suggest that, even if remedies are retained in credit contracts, they will not be used if in general they are less valuable to creditors than they are to consumers. The BCP may be correct in maintaining that bargains over remedies will not be struck on an individual basis. Nonetheless, creditors' generally will not use unpopular remedies because they stand to lose substantial customer "goodwill" if they exercise such a remedy.

While consumers may not understand the "legalese" in a credit contract, they do know if creditor X did "right" or "wrong" to their friend or relative. Creditors that "wrong" customers frequently will soon find that their potential clientele is diminished. Eventually such

creditors will find they only have truly desperate credit applicants who could not get credit elsewhere and opted for an "unfair" legal lender as a last resort before applying to even more repressive illegal loan sharks. Thus, to preserve their market share creditors must retain consumers' "goodwill." This fact, taken in conjunction with equation (1), suggests that creditors will not use unpopular remedies very frequently--even if they have the legal right to do so. Using such a remedy will generally cost the creditor more in terms of lost "goodwill" than it will gain them in terms of recoveries on bad debts.[12]

This analysis can explain why, in general, creditors value most highly those remedies that are most acceptable to consumers and value least those remedies least liked by consumers. Consequently, even if a particular remedy should be in the credit contract, it is unlikely to be used, except possibly in the case of recalcitant debtors, if it is highly unpopular with consumers. Because of "goodwill" considerations it is not necessary for the vast majority of consumers either to eliminate all remedies from credit contracts through legislative fiat or to bargain directly with creditors to eliminate specific remedies. If the potential goodwill loss to the creditor using a remedy is sufficiently high, that creditor will not ordinarily exercise that remedy, even if it is legally available to him.

2. Resolving Other Conflicts

The "goodwill" mechanism we have described explains why creditors are likely to value most highly those remedies that are most acceptable to consumers, and vice versa. However, it does not predict what is likely to happen if consumers do not like a remedy, but consumers find it highly

useful--i.e., both GWL and $R\text{-}C_r$ in equation (1) are large. In that case, a substantial number of consumers may dislike a remedy but creditors may use it anyway because of its collection value. Such remedies could include wage garnishment--which was most highly valued by creditors but disliked by a majority of consumers--and the assessment of creditors' attorneys fees--which was highly valued by creditors, but was only moderately acceptable (equally liked and disliked) by consumers.

One possibility here could be that consumers that disliked the remedy intensively could negotiate such clauses out of their debt contracts. This is not generally practical, however, because such negotiations are costly and the negotiation process alone might add more to the cost of the contract than the consumer would save by eliminating the remedy. In addition, creditors would be unlikely to negotiate individually on such remedies because they would suspect that consumers who wished to negotiate had elevated probabilities of default.

Nonetheless, the market could adjust to such a situation. If a sufficient number of consumers wished to obtain credit contracts without a particular remedy, and were willing to incur the search costs and pay the extra charge necessary to obtain such contracts, some creditors could prosper by offering such contracts at a premium price.

Clearly, the data presented in Exhibit 23 suggest that a relatively large percentage of consumers, 54 and 43 percent, respectively, do not believe creditors should be allowed to garnish wages or assess attorneys fees. However, only a relatively small percentage of consumers were willing to pay extra for such protection (18.4 percent were willing to pay extra to escape attorneys fees) and their willingness to pay was

quite low (2.0% of the contract value for those willing to pay and 0.4% for consumers as a whole). As a result most consumers would not be willing to incur the search costs necessary to locate a creditor who did not use those remedies. Further, most consumers would not likely be willing to pay such creditors enough extra so that they could profitably eliminate such remedies from their credit contracts.

In the absence of market-induced abolishment of remedies, regulators or legislators have often banned or restricted various remedies. This may or may not lead to an improvement in consumer welfare. It will lead to an improvement in consumer welfare only if the gain to consumers exceeds the added cost to creditors, and high search costs or transactions costs have made it unprofitable for creditors to offer credit without the remedy. Legislation will reduce consumer welfare if the gain to consumers is less than the extra cost consumers must pay to compensate creditors for the extra collection costs or losses they incur without the remedy.

In short, the gains to legislation can be measured in terms of search cost and transaction cost economies that some consumers may realize if legislative uniformity is imposed. In the absence of rate ceilings, if net gains are positive, one would expect the total quantity of credit used to expand when remedies were restricted. If net gains are negative one would expect total remedy use to contract. This is illustrated by Exhibit 24.

Exhibits 24A and 24B illustrate cases where legal restrictions on remedies are imposed. In both Exhibits 24A and 24B, elimination of the remedy causes the supply of credit curve to rise sharply as creditors seek to recoup the extra collection costs and losses they incur in the

Exhibit 24A

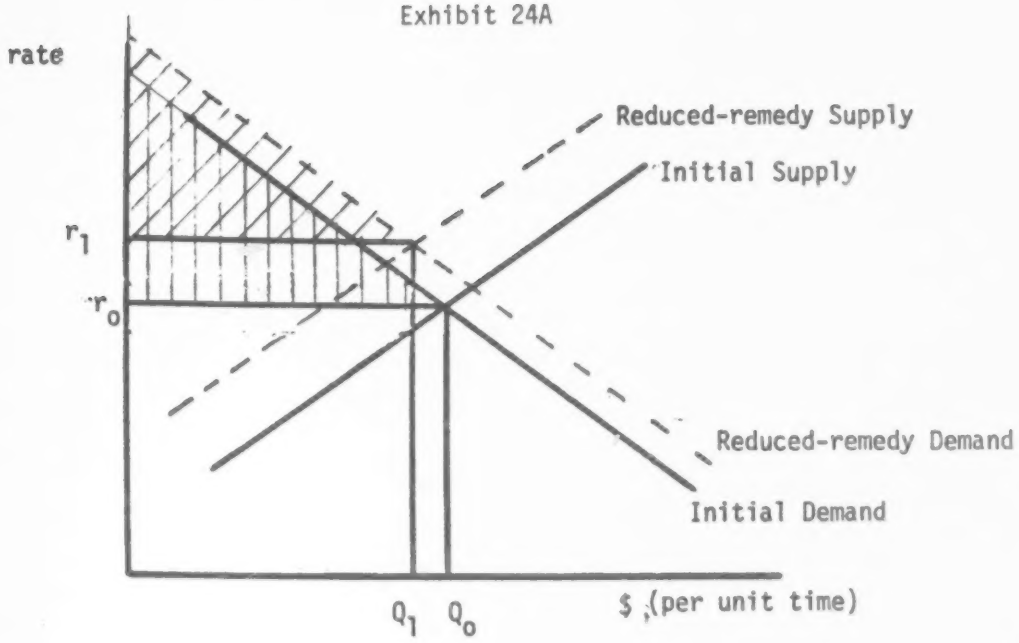
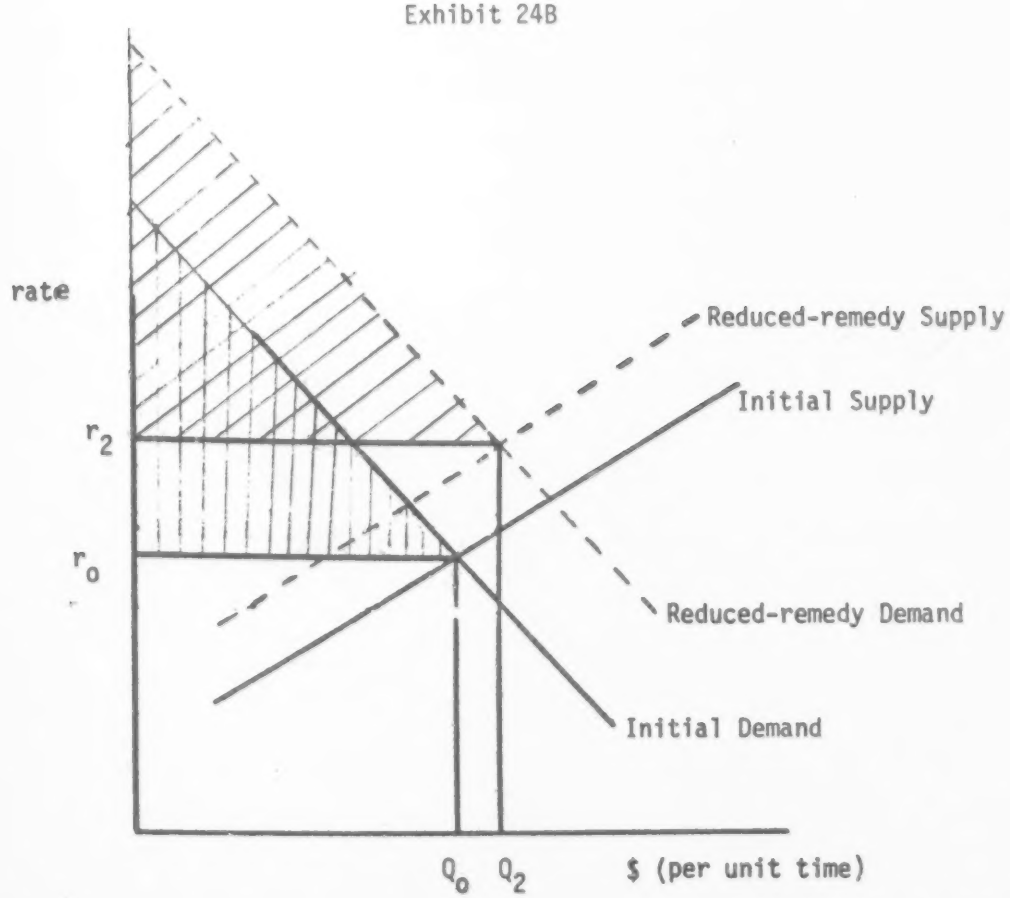


Exhibit 24B



absence of the remedy. At the same time, credit demand increases as consumers are willing to pay more to borrow if they do not fear that the remedy will be imposed. In Exhibit 24A, the reduction in supply exceeds the increase in demand. Less credit is available at higher rates. In Exhibit 24B the reduction in supply is less than the increase in demand. More credit is demanded even though rates increase.

If we assume linear demand curves with invariant constant slopes in each case, it is possible to conclude that consumers surplus will decrease in Exhibit 24A (as the "new," diagonally shaded, area of consumers surplus under the demand curve is smaller than the "old," vertically shaded area). However, in Exhibit 24B, following a similar line of reasoning, "consumers surplus" will increase. Thus, legislated restrictions on remedies generally will reduce consumer welfare if the new equilibrium quantity of credit is less than the old equilibrium quantity, and increase consumer welfare if the equilibrium quantity demanded increases.

Because our survey shows that creditors value garnishment and attorneys fees highly and the majority of consumers do not appear to be willing to pay much for various remedy protections, one would expect that legal abolishment of such remedies would lead to a greater reduction in supply than increase in demand. Thus, the quantity of credit would fall and, under the assumptions made above, consumers surplus (welfare) would be reduced. Previous analysis of NCCF data is consistent with this hypothesis. Both Greer and Peterson and Frew found that prohibitions against attorneys fees and garnishment were associated with reductions in the quantity (dollar volume or number) of personal loans made in a given state.[13]

Thus, we conclude that in cases where creditors continue to use a relatively unpopular remedy they do so because its value to them exceeds the value to consumers. Prohibition of such remedies, therefore, will lead to reductions in aggregate credit use and in consumer welfare.

We also conclude that if a creditor does not value a remedy highly for collection purposes and it is disliked by most consumers the creditor will not value the remedy highly or use it frequently--for fear of losing customer goodwill.

VI. Summary and Conclusions

This paper has investigated creditor use and evaluation of remedies as well as consumer valuation and willingness to pay for remedies in four states with substantially different remedy environments.

It observed that:

(1) Creditors used tough collection remedies sooner and more frequently in states with low legal loan rate ceilings.

(2) Creditors used remedies least frequently in a state with high rate ceilings where remedies were costly to exercise.

(3) Creditors valued some remedies much more highly than others.

(4) Consumers in general were not very willing to pay for protection against the exercise of various collection remedies.

(5) While consumers who expected they might fall behind on their debts were more willing to pay for remedy protection than others, even they were not willing to pay much for such protections, and the majority were not willing to pay anything at all.

(6) The state-wide remedy environment strongly influenced consumers' willingness to pay for various remedy protections. Consumers were least

willing to pay for protection where creditors' remedies were weakest and "tough" remedies were least frequently used. They were most willing to pay for remedy protection where statutory remedies were least restricted or "tough" remedies were most frequently used.

(7) Consumers clearly learned about remedies through experience. If they had previously fallen behind on their debts in a state where "tough" collection activities were used, they were more willing to pay for future remedy protections. Conversely, if they had found through experience that certain remedies were not used or were not onerous in a particular state, they were willing to pay less for protection against the exercise of such remedies.

(8) Consumers found some remedies far more acceptable than others. Interestingly enough, many of those remedies were also highly valued by creditors. Conversely, if consumers strongly disliked various remedies, creditors generally did not favor them either. These observations suggest that creditors will not use remedies frequently if they fear they will lose substantial goodwill by doing so.

(9) In cases where creditors valued remedies highly, but consumers did not, a potential conflict existed. Analysis of NCCF data suggests that where legislative action to prohibit such remedies was taken, a loss of welfare seemingly resulted. This result suggests that creditors will use unpopular remedies only when they feel the net gain from doing so exceeds consumers' willingness to pay for contracts that lack that remedy.

(10) Overall, the evidence presented in this paper suggests that markets adapt to both creditor and consumer evaluation of remedies. If

consumers strongly dislike a remedy, creditors are unlikely to value it highly as a collection device. However, if consumers have mixed feelings about a remedy and creditors feel it is effective, that remedy will continue to be used unless it is banned by legislative fiat.

FOOTNOTES

[1]See National Commission on Consumer Finance, Consumer Credit in the United States; Report of the National Commission on Consumer Finance, Washington, D.C.: Government Printing Office, 1972; National Commission on Consumer Finance, Creditors' Remedies and Contract Provisions: An Economic and Legal Analysis, Technical Studies Volume V, by Douglas F. Greer; National Commission on Consumer Finance, Washington, D.C.: Government Printing Office, 1973; and National Commission on Consumer Finance, An Econometric Analysis of Consumer Credit Markets in the United States, Technical Studies Volume IV, edited by Douglas F. Greer and Robert P. Shay, Washington, D.C.: Government Printing Office, 1973.

[2]See Shay, Robert P. "Testimony at FTC Hearings on the Proposed Trade Regulation Rule on Credit Practices," Hearing Exhibit 494, Federal Trade Commission, Washington, D.C. 1968; and Barth, James A. and Anthony M.J. Yezer, "Testimony at FTC Hearings on the Proposed Trade Rule on Credit Practices," Hearing Exhibit 505, Federal Trade Commission, Washington, D.C. 1978.

Barth and Yezer, often in conjunction with others, have done a number of related studies. These include:

Barth, James and Anthony Yezer, "The Economic Impact of the Federal Trade Commission Proposals for Credit Contract Regulations on the Cost and Availability of Consumer Credit," Bureau of Social Science Research, Inc., Washington, D.C., 1977;

Aho, Michael, James Barth, Joseph Cordes and Anthony Yezer, "Regulations' Impact on the Cost/Availability of CRedit," Journal of Consumer Credit Management, Winter, 1979; and

Barth, James, Padma Gotur, Neela Manage, and Anthony Yezer, "A New Approach to Estimating the Impact of Regulations on Personal Loan Markets," Economic Discussion Paper, George Washington University, 1980.

[3]See Peterson, Richard L. "The Impact of Restricted Creditors' Remedies on Automobile Finance Companies in Wisconsin, Working Paper No. 12. Credit Research Center, Purdue University, West Lafayette, Indiana, 1977;

Peterson, Richard L. "Changes in Finance Company Personal Loan Policies following Enactment of the Wisconsin Consumer Act," Working Paper No. 13, Credit Research Center, Purdue University, West Lafayette, Indiana, 1977;

Peterson, Richard L. and James A. Frew, "Creditor Remedy Restrictions and Interstate Differences in Personal Loan Rates and Availability: A Supplementary Analysis," Working Paper No. 14, Credit Research Center, Purdue University, West Lafayette, Indiana, 1977; and

Dunkelberg, William C. "Banks' Lending Response to Restricted Creditors' Remedies," Working Paper No. 20, Credit Research Center, Purdue University, West Lafayette, Indiana, 1978.

Footnotes (continued)

[4]Johnson, Robert W. Cost/Benefit Analysis of Creditors' Remedies: Monograph No. 12, Credit Research Center, Purdue University, West Lafayette, Indiana, 1978.

[5]See Federal Trade Commission, Bureau of Consumer Protection, Memorandum in support of a Trade Regulation Rule on Credit Practices, 1974 and;
Federal Trade Commission, Bureau of Consumer Protection, Credit Practices; Staff Report and Recommendations on Proposed Trade Regulation Rule 16 CFR Part 444: Public Record 215-42. and
Barth and Yezer (1977) op. cit.

[6]Caplovitz, David, Debtors in Default, Bureau of Applied Social Research, Columbia University, New York, 1970; and
Caplovitz, David, Consumers in Trouble: A Study of Debtors in Default, The Free Press, New York, 1974.

[7]If the questions were stated in monthly payment form, it would be necessary to convert that information to a present value. The pretest suggested that consumers seemingly varied widely in terms of time preference or in their ability to express a time preference. Thus, the appropriate discount rate is hard to determine. Further, even the present value of monthly payments cannot be cumulated over the full life of the loan if a consumer expects he may default (with non-zero probability) at some indefinite time in the future.

[8]Unrealistically large responses were defined as responses that exceeded the maximum value of the remedy. For instance, in Exhibit 9 (question M18 in Exhibit 7) the consumer is told the remedy protection may save him up to $300. Thus, any response over $300 is clearly more than the possible present value of the remedy--and even $300 is too high (although, we included it) for someone with positive time preference. Similarly, if the maximum late charge is $5 per month (as it usually is, except in Wisconsin where it is $3), the maximum saving from a non-pyramided $1 late fee is 48 x ($5-$1) or $196. Thus, in the late fee question (M19) we deemed responses over $200 to be unrealistically high. In questions M20 and M21 on repossession and deficiency judgments, we assumed the maximum realistic savings from the remedy protection would be $500, since the consumer was told that was the difference between what the car was worth and the remaining amount of the hypothetical debt.

[9]Johnson, op. cit.

[10]FTC Bureau of Consumer Protection, Memorandum, op. cit.

Footnotes (continued)

[11]See Peterson and Frew, op. cit, and Peterson, Richard L. and Michael D. Ginsberg, "Regulatory Influences on Commercial Bank Personal Loan Rates," Proceedings of a Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago, 1977, and NCCF (Greer) op.cit.

[12]One exception could exist if the creditor used the remedies to signal they would be "tough" with delinquent debtors who flaunted their non-payment of debts. For instance, in response to the survey, one creditor said he would work with debtors who were willing to pay but would take every action possible to collect a debt if a debtor were not concerned about repaying the debt.

[13]Peterson and Frew (op. cit) and NCCF (Greer) op.cit.